IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| PITCAIRN ENTERPRISES, INC., Plaintiff, | : | CIVIL ACTION |
| v. | : | |
| UNIVERSAL COMPUTER CONSULTING INC. and UNIVERSAL COMPUTER MAINTENANCE, INC., a/k/a UNIVERSAL COMPUTER SERVICES, INC., | : | |
| Defendants. | : | NO. 00-CV-5560 |

**MEMORANDUM & ORDER**

**J.M. KELLY, J.** **JUNE , 2001**

Presently before the Court are Cross Motions for Summary Judgment in the above matter. In addition, Plaintiff, Pitcairn Enterprises, Inc. ("Pitcairn"), has filed a Renewed Motion for Temporary Restraining Order. Pitcairn filed its Complaint in this matter to terminate arbitration of its dispute with Defendants, Universal Computer Consulting, Inc. and Universal Computer Maintenance, Inc.[1] (collectively "Universal").

**BACKGROUND**

Pitcairn and Universal entered into an agreement in 1989 (the "Agreement"), which was amended in 1991 to extend the term of the Agreement and alter payment terms.[2] Section Seventeen of

[1] Universal Computer Maintenance, Inc. is now known as Universal Computer Services, Inc.

[2] While there are two Universal entities and two separate contracts underlying this dispute, it appears that the relevant language in both contracts is identical, therefore the Court

the Agreement provides that all disputes between the parties are to resolved by arbitration. The arbitration clause in the Agreement refers to "all claims, disputes, controversies and other matters in dispute between the parties." Agreement, § 17. The parties are to attempt to agree upon a single arbitrator within thirty days of a demand for arbitration. Id., § 17(C). If the parties cannot agree upon a single arbitrator, each party chooses an arbitrator and the parties' arbitrators choose a third arbitrator. Id., § 17(D). The Agreement, in an apparent internal inconsistency, then states that the party demanding arbitration loses its right to arbitrate if it fails to name an arbitrator within ten days of the demand. Id., § 17(E).

A dispute arose between the parties and Universal demanded arbitration. Although Universal failed to name an arbitrator within ten days, Universal's arbitrator was ultimately named within ten days of the failure to name a single arbitrator. Pitcairn seeks to enjoin the arbitration because Universal failed to name its arbitrator within the time prescribed by the Agreement and because an acceleration clause in the Agreement would extract a usurious interest rate from Pitcairn.

## STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), summary

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shall address the contracts as one.

judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This Court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

**DISCUSSION**

A court presented with an agreement containing an arbitration provision performs a narrow function: the court must

decide whether there was a valid agreement to arbitrate, and if a valid arbitration agreement exists, the court then must decide whether the dispute falls within the substantive scope of that agreement. AT & T Tech., Inc. v. Communications Workers, 475 U.S. 643, 648(1986); Painewebber Inc. v. Hartmann, 921 F.2d 507, 511 (3d Cir. 1990). The court must leave all substantive issues for the arbitrator. AT & T, 475 U.S. at 650; Great W. Mortgage Corp. v. Peacock, 110 F.3d 222, 228 (3d Cir. 1997). To accomplish its limited task, the court preliminarily will decide whether the agreement falls under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 (1994). The FAA is applicable if the parties' written agreement contains a provision submitting disputes arising from the agreement to arbitration and the contract involves commerce. See id., § 2. Further, the agreement is valid and enforceable under the FAA unless the party resisting arbitration can show it was induced to enter the contract through fraud, duress, or some other equitable or legal defense. Id.; Seus v. John Nuveen & Co., 146 F.3d 175, 183-84 (3d Cir. 1998), cert. denied, 525 U.S. 1139 (1999). Significantly, the court must resolve all doubts in favor of arbitration when interpreting an agreement covered by the FAA. Volt Info. Sciences, Inc. v. Board of Trustees, 489 U.S. 468, 475-76 (1989).

The parties' Agreement does not raise any doubts; the Court

is convinced the Agreement contains an arbitration provision governed by the FAA, the provision is valid and enforceable, and this dispute falls within the scope of the arbitration provision. The Agreement involves commerce under the FAA, Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 273-74 (1995) (holding that commerce required under FAA must be as broadly construed as Congress's power under Commerce Clause), and because Pitcairn has not alleged a legal or equitable defense to the Agreement, the Court finds it is valid. That a provision in the Agreement might be unenforceable and that Universal may have waived its right to arbitrate are issues for the arbitration panel to decide first. At the very least, the arbitration panel must have the initial opportunity to address the apparent ambiguity within the arbitration clause.

Further, this dispute falls within the scope of the Agreement's arbitration provision. The parties intended, as evidenced by the provision, to submit any controversy whatsoever to arbitration. To this end, the parties used expansive, all-encompassing language. The dispute at issue here plainly falls within the scope of this provision. Cf. Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 61 n. 7 (1995)(quoting Raytheon Co. v. Automated Bus. Sys., Inc., 882 F.2d 6, 10 (1st Cir. 1989)). Accordingly, Universal's Motion for Summary Judgment is granted, Pitcairn's Motion for Summary Judgment is

denied and the parties may proceed to arbitrate this matter. As Universal's Motion for Summary Judgment is granted, Pitcairn's Renewed Motion for a Temporary Restraining Order is dismissed as moot.

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| Defendants. | : | NO. 00-CV-5560 |

**O R D E R**

AND NOW, this day of June, 2001, upon consideration of the Motion for Summary Judgment of Plaintiff, Pitcairn Enterprises (Doc. No. 14), the Motion for Summary Judgment of Defendants, Universal Computer Consulting, Inc. and Universal Computer Services, Inc. (Doc. No. 15), the Renewed Motion for a Temporary Restraining Order of Plaintiff, Pitcairn Enterprises (Doc. No. 18) and the Responses thereto, it is ORDERED:

1. The Motion for Summary Judgment of Plaintiff, Pitcairn Enterprises, is DENIED.

2. The Motion for Summary Judgment of Defendants, Universal Computer Consulting, Inc. and Universal Computer Services, Inc. is GRANTED. Judgment is ENTERED in favor of Defendants, Universal Computer Consulting, Inc. and Universal Computer Services, Inc. and against Plaintiff, Pitcairn Enterprises.

3. The Renewed Motion for a Temporary Restraining Order of Plaintiff, Pitcairn Enterprises, is DISMISSED AS MOOT.

BY THE COURT:

JAMES McGIRR KELLY, J.